



Appointment as Interim Co-Lead Class Counsel [Docket Entry #14, No. 3:11-cv-248-M], filed by Plaintiffs in *Simms et al. v. Jones et al.*; and the Cross-Motion for Appointment as Interim Lead Class Counsel [Docket Entry # 41, No. 3:11-cv-248-M], filed by the *Laffin* Plaintiffs.

*Consolidation*

Here, the two actions concern a common question of law or fact, the cases are at the same stage of litigation, and consolidation would avoid unnecessary costs or delay. Fed. R. Civ. P. 42; *Frazier v. Garrison ISD*, 980 F.2d 1514, 1532 (5th Cir. 1993); *Mills v. Beech Aircraft Corp.*, 886 F.2d 758762 (5th Cir. 1985). The Court is aware that the putative class in the *Simms* action, unlike the *Laffin* action, includes the Founder's class, but the Court can address that issue in a consolidated case.

Therefore, it is **ORDERED** that these two actions be **CONSOLIDATED**. All pleadings, motions, or other filings are hereafter to be filed in Civil Action No. 3:11-cv-248-M. The Clerk shall administratively close Civil Action No. 3:11-cv-345-M.

*Interim Lead Counsel*

Under Federal Rule of Civil Procedure 23(g)(3), the Court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action. Interim class counsel is appropriate where, as here, there are overlapping, duplicative, or competing suits present. *See* Manual for Complex Litigation, Fourth, § 21.11, at 246 (Federal Judicial Center 2004). Courts use the same qualification criteria for designating interim counsel as are used for appointing class counsel, which include: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the

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discretion to decide whether to consolidate actions under Federal Rule of Civil Procedure 42(a), and may consolidate cases *sua sponte*. *See Miller v. U.S. Postal Service*, 729 F.2d 1033, 1036 (5th Cir. 1984).

action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1) (A).

Putative class members are fortunate to have qualified counsel from Eagan Avenatti L.L.P. and The Law Offices of R. Jack Ayres, Jr., P.C., and from Goldfarb Branham L.L.P., seeking to serve as interim counsel. All of them possess sufficient experience, knowledge of the applicable law, and resources to represent the putative class in this matter. However, after considering the Rule 23(g)(1)(A) factors, and noting that Plaintiffs' counsel in the *Simms* case originally proceeded in federal court, while counsel in *Laffin* resisted doing so, the Court concludes that Eagan Avenatti L.L.P. and The Law Offices of R. Jack Ayres, Jr., P.C. should be designated as interim co-lead class counsel. Therefore, the *Simms* Plaintiffs' Motion for Appointment as Interim Lead Class Counsel is **GRANTED**, and the *Laffin* Plaintiffs' Cross-Motion for Appointment as Interim Lead Class Counsel is **DENIED**. Eagan Avenatti L.L.P. and The Law Offices of R. Jack Ayres, Jr., P.C. shall serve as interim co-lead class counsel. They are to file a Consolidated Class Action Complaint on or before **May 6, 2011**. Defendants shall file an answer or otherwise respond to the Consolidated Class Action Complaint on or before twenty days after that Complaint is filed.

**SO ORDERED.**

April 8, 2011.

  
BARBARA M. G. LYNN  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF TEXAS